



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: A.B. Dick Company

File: B-228242.2

Date: October 30, 1987

DIGEST

Once a protest is denied by the procuring agency, any subsequent protest to the General Accounting Office must be filed within 10 working days of formal notification of initial adverse agency action and a protester's subsequent efforts to pursue its complaint with the contracting agency do not toll this period.

DECISION

A.B. Dick Company protests alleged noncompetitive aspects of request for quotation (RFQ) No. DAAC01-87-Q-1173, issued by the Anniston, Alabama Army Depot (ANAD) for a total copy system.

We dismiss the protest.

The protester received the original RFQ on August 17, 1987, and wrote to ANAD on the next day to express concern over solicitation requirements that it characterized as "unduly restrictive." In its letter, Dick objected to the RFQ requirements for online configuration, electronic ink and moisture, random sequence distribution, duplicating capacity for 700 masters, document feeder capacity of 60 sheets and automatic shut-off device. On August 28, Dick received the Army's response to its letter. The Army agreed to revise the 700 masters capacity to 500 masters and to state a feeder capacity of 50 sheets, but it stated that the rest of the requirements reflected agency needs and would not be changed.

ANAD issued a revised RFQ, consistent with its letter to Dick, which set a new closing date of September 8. The protester asked for a meeting, and met with the procuring agency on September 3, to discuss its concerns. At this meeting, Dick reports that it again objected to the

restrictive nature of the RFQ. Dick advises that this meeting confirmed its knowledge of the agency's adverse position on its objections to the RFQ. Dick further states that the agency representative advised the firm that there were no avenues of protest available until award was made and that Dick's only alternative was to submit a quote and note its exceptions to the requirements and await evaluation.

The protester subsequently submitted a timely quote, noting the exceptions that it took to the specifications. Quotes were received and recorded on September 8, and, on September 18, ANAD notified the protester that award would be made to A.M. International. Dick then filed this protest with our Office on October 2, again challenging as unduly restrictive the specifications which the Army refused to change in its letter to Dick received on August 28.


Pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987), to be timely, protests concerning alleged improprieties apparent in the solicitation must be filed with the agency or this Office before the closing date for submission of quotations. Dick's letter of August 18, which we construe as a protest, was therefore timely filed with the agency. However, although the agency protest was timely, our regulations require that any subsequent protest to our Office must be filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3). In this instance, initial adverse agency action was the ANAD letter received by Dick on August 28, in which the agency indicated that it would not satisfy all of the protester's objections. At this point, the protester was required under our Bid Protest Regulations to file with our Office within 10 working days of receipt of this letter. The fact that Dick continued to pursue its complaint with the contracting agency does not toll the period for filing with our Office. Dontas Painting Co., B-226797, May 6, 1987, 87-1 CPD ¶ 484. Accordingly, Dick's protest, filed with our Office on October 2, more than 10 working days after initial adverse agency action on August 28, is untimely. 4 C.F.R. § 21.3 (a)(3).

Dick indicates that ANAD advised the firm that it could not protest the RFQ until after award had been made. While it is unfortunate that Dick may have been misled, this does not excuse the untimeliness of its protest. Our regulations have been published in the Federal Register, and protesters

therefore are charged with constructive knowledge of our filing rules. Killeen Pest Control, Inc.--Request for Reconsideration, B-223778.2, Jan. 7, 1987, 87-1 CPD ¶ 21; Ratcliffe Corp.--Request for Reconsideration, B-220060.2, Oct. 8, 1985, 85-2 CPD ¶ 395.

Finally, Dick protests ANAD's rejection of its quotation and ANAD's refusal to extend an opportunity to prove or disprove the protester's ability to meet the RFQ's requirements. Dick was aware of the RFQ specifications but failed to file a timely protest of these requirements with our Office; instead it submitted a quote that it admits took exception to the solicitation requirements and did not meet the government's stated minimum needs. Since the quotation took exception to the specifications, rejection of the quotation was proper.

We dismiss the protest.


Ronald Berger
Deputy Associate
General Counsel